DOUGLAS JAFFE, ESQ. Bar No. 170354
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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

EUGENE GENCHEV, Plaintiff, vs. DETROIT DIESEL CORPORATION, Defendant.	Case No.: 08-01021-W-NLS OPPOSITION TO MOTION TO DISMISS OR FOR SUMMARY JUDGMENT HEARING DATE: August 4, 2008 NO ORAL ARGUMENT PURSUANT TO LOCAL RULE 7.1

I. Preliminary Statement

Genchev purchased a 2004 Freightliner CL120 vehicle and a 2005 Freightliner FLD from an authorized Detroit Diesel distributor (the “Vehicles”). The Vehicles are commonly known as the tractor portions of a tractor/trailer (an "18-wheeler") for trucking large loads over long distances. Detroit Diesel expressly warranted the engines of the Vehicles.

Genchev previously commenced an action against Freightliner, LLC, that was removed to this Court, based upon Freightliner’s fraud in selling Genchev the Vehicles without disclosing the Vehicle’s nonconformities that Freightliner had documented in its records prior to the sale of the Vehicles to Genchev. Genchev also asserted claims based upon Freightliner’s warranty, which expressly excluded the Vehicle’s engines which were warranted by Detroit Diesel.

Genchev obtained a jury verdict in his favor. Just before the jury was to determine the amount of punitive damages against Freightliner, it settled the action by paying Genchev over $60,000. The Court dismissed, "all causes of action filed by plaintiff against defendant". That was the exact language of the stipulation of dismissal filed by Genchev and Freightliner and was intentionally limited to claims against only Freightliner. See, Genchev v. Freightliner, 05CV2071 (the "Freightliner Action") , Docket Entries 112 and 114 . There was no other settlement document.

The Vehicles have experienced engine nonconformities which are covered by the Detroit Diesel warranties. Detroit Diesel has failed and refused to pay for the repairs. These claims were not addressed in the Freightliner Action as they did not involve Freightliner's fraud and the Freightliner warranties which expressly disclaimed the engines which are the subject of this action.

There was no requirement that those claims be brought in the other action. Furthermore, these engine nonconformities arose after the commencement of the Freightliner Action and after the deadline set by this Court for the joinder of new claims and/or new parties.

II. Standard Of Review

A. The Motion To Dismiss

To avoid a Rule 12(b)(6) dismissal, a complaint need not contain detailed factual allegations. Rather, it must plead "enough facts to state a claim to relief that is plausible on its face". Bell Atlantic Corp. v. Twambly, -- U.S. --, 127 S.Ct. 1955, 1974, 167 L.Ed 2d 929 (2007); William Ex. Rel. Tabiu v. Gerber Products Co., 523 F.3d 934, 938 (9th Cir. 2008).

"The motion to dismiss is not a procedure for resolving a contest between the parties about the facts or the substantive merits of the plaintiff's case". William Ex. Rel. Tabiu v. Gerber Products Co., 523 F.3d at 938 (9th Cir. 2008). All allegations of material fact in the complaint are taken as true and construed in the light most favorable to the plaintiff. Stoner v. Santa Clara County Office of Educ., 502 F.3d 1116, 1120 (9th Cir. 2007). "A well-pleaded complaint may proceed even if its strikes a savvy judge that actual proof of those facts is improbable, and that a recovery is very remote and unlikely". Bell Atlantic Corp. v. Twambly, --U.S. --, 127 S.Ct. 1955, 1965, 167 L.Ed 2d 929 (2007).

Applying these standards to Genchev's complaint, the motion to dismiss should be denied.

B. The Motion For Summary Judgment

Detroit Diesel includes a motion for summary judgment along with the motion to dismiss. Such "motions in the alternative" should be disfavored. Detroit Diesel has not set forth which material fact are allegedly not in dispute, and has not even filed an affidavit in support of the motion from any Detroit Diesel employee or anyone with personal knowledge regarding this matter.

It appears that Detroit Diesel has included the motion for summary judgment pursuant to F.R.C.P. 12(d) so the Court can simply consider matters outside the pleadings in determining the motion to dismiss.

III. Res Judicata And/Or Collateral Estoppel Do Not Bar Plaintiff's Claims

As Detroit Diesel concedes, the issues in the two actions must be identical to apply res judicata or collateral estoppel. The issues in this action are not identical to those in the Prior Action.

The Freightliner warranty expressly states under the section of the warranty entitled "Exclusions", "The engine, including all its components as supplied by the manufacturer, are not covered under this Warranty, but is warranted separately by the manufacturer of the engine. For engine warranty or service, contract the engine manufacturer's authorized sales and service facility". See, Genchev Declaration at Exhibit A.

Detroit Diesel separately warranted the engines of the Vehicles. See, Genchev Declaration at Exhibit B. The engine warranties for both Vehicles contain the same terms. See, Genchev Declaration at paragraph 7. The issues regarding the Vehicle engines were not litigated in the Freightliner Action. See, Genchev Declaration at paragraph 7.

On December 20, 2006, Detroit Diesel admitted the engine nonconformities. Attached as Exhibit C to the Genchev Declaration is a letter from Valley Power Systems, Inc. to Genchev. Valley Power Systems, Inc. is an authorized Detroit Diesel warranty repair facility. See, Genchev Declaration at paragraph 8.

Through the December 20, 2006 letter, Detroit Diesel most significantly admitted the coolant leak at the EGR cooler. See, Genchev Declaration at Exhibit C, #12. That coolant leak is causing unacceptable contamination of the engine oil. See, Genchev Declaration at Exhibit D. As set forth on page 2 of Exhibit D to the Genchev Declaration under the section entitled, "Coolant Content", "Abnormal condition can cause severe degradation of the lubricant, leading to local oil starvation, lubricant failure and eventual excessive mechanical wear". Both of the Vehicles are experiencing similar engine nonconformities. See, Genchev Declaration at paragraph 9. It should be noted that Exhibits B, C, and D to the Genchev Declaration were not offered or admitted as trial exhibits in the Freightliner Action.

By December 20, 2006, the deadline of May 15, 2006 set by this Court in the Freightliner Action had elapsed for the joinder of new claims and/or new parties. See, Freightliner Action at Docket Entry 13. Genchev was not able to amend and add the claims against Detroit Diesel to the Freightliner Action.

The Vehicles have experienced engine nonconformities which are covered by the Detroit Diesel warranties. Detroit Diesel has failed and refused to pay for the repairs. These claims were not addressed in the Freightliner Action as they did not involve Freightliner's fraud and the Freightliner warranties which expressly disclaimed the engines which are the subject of this action. See, Genchev Declaration at paragraph 5. There was no requirement that those claims be brought in the Freightliner Action

IV. Detroit Diesel's Negligence

Genchev's claim for negligence is not barred by the "economic loss rule". See, Robinson v. Helicopter Co., Inc. v. Dana Corp. (2004) 34 Cal. 4th 979 ("In Erlich v. Menezes (1999) 21 Cal. 4th 543, 551, we held that a party's contractual obligation may create a legal duty and that a breach of that duty may support a tort action"). The Court in Robinson failed to apply the economic loss rule with facts similar to this action.

Freightliner made the same argument in the Prior Action regarding the economic loss rule. This Court denied Freightliner's motion in limine to exclude evidence based upon the economic loss rule. See Prior Action, Docket Entries 33, 51, and 68.

V. Detroit Diesel's Breach Of Contract

As held in Webster v. Klassen (1952) 109 Cal. App. 583, simply because there is no difference in the damages recoverable for breach of contract and breach of warranty does not make them the same claim. See also, Seely v. White (1965) 63 Cal. 2d 9 (Action by heavy-duty hauling truck purchaser against manufacturer for breach of express and implied warranties, for breach of contract, and for property damage).

VI. Detroit Diesel's Violation Of The Commercial Code

In Seely v. White (1965) 63 Cal. 2d 9, the California Supreme Court upheld claims against a manufacturer by a heavy-duty hauling truck purchaser and applied the law of sales contained in the Commercial Code.

VII. Detroit Diesel's Breach Of Warranties

Detroit Diesel expressly warranted the Vehicle engines. See, Genchev Declaration at Exhibit B. The engine warranties for both Vehicles contain the same terms. See, Genchev Declaration at paragraph 7. There is privity of contract between Detroit Diesel and Genchev through the express warranties Detroit Diesel provided.

VIII. The Statute Of Limitations Does Not Apply

As Detroit Diesel admits, the statute of limitations begins to run when the buyer becomes aware of unsatisfactory performance. See, Moving Brief at p. 14, lines 16-18. That did not happen until December 20, 2006 as set forth above when Genchev received the letter from Detroit Diesel's authorized repair facility. This action was filed within either a two year or four year statute of limitations. The statute of limitations does not run from the date of purchase.

IX. Detroit Diesel's Unjust Enrichment

Unjust enrichment is a common law claim recognized by the California Supreme Court. Cruz v. PacifiCare Health Systems, Inc. (2003) 30 Cal. 4th 303, 320; See also, Ghirardo v. Antonioli (1996) 14 Cal. 4th 39, 50.

Whether the cause of action is titled "unjust enrichment" or "action for restitution" should not be the basis for excluding evidence in response to a motion in limine. The elements of a claim for unjust enrichment are: 1) receipt of a benefit; and 2) unjust retention of the benefit at the expense of another. First Nationwide Savings v. Perry (1992) 11 Cal. App. 4th 1657, 1662 (Reversing grant of demurrer); See also, Lectrodryer v. SeoulBank (2000), 77 Cal. App. 4th 723, 726.

Detroit Diesel financially benefited by the sale of the Vehicles to Genchev and that benefit was accepted and appreciated by Detroit Diesel under such circumstances that it would be inequitable for Detroit Diesel to retain the benefit conferred.

X. Discovery Should Be Allowed Pursuant To F.R.C.P. 56(f)

As set forth in the Genchev Declaration at paragraph 10, Genchev requests the Court allow discovery pursuant to Rule 56(f) of the Federal Rules Of Civil Procedure. This action was only recently removed to this Court and no discovery is allowable yet pursuant to Rule 26 of the Federal Rules Of Civil Procedure. Discovery will provide such essential facts as :

1) Detroit Diesel's admissions regarding the warranties it provided for the Vehicles;

2) Repair records which will include the notes of the repair technicians which are admissions against interest for Detroit Diesel; and

3) Detroit Diesel's warranty history regarding the Vehicle which will demonstrate that Detroit Diesel has covered some nonconformities under its warranties with me, which assists in demonstrating the existence of the warranties.

XI. Conclusion

Genchev requests the Court deny the motions, or for leave to amend, and for such other and further relief as the Court deems proper.

Dated: July 21, 2008

LAW OFFICES OF DOUGLAS JAFFE

s/ Douglas Jaffe
Douglas Jaffe

PROOF OF SERVICE

I am over the age of 18 years and not a party to or interested in the within entitled action. My business address is 402 West Broadway, 4th Floor, San Diego, California 92101.

On July 21, 2008, I served the foregoing

OPPOSITION TO MOTION TO DISMISS OR FOR SUMMARY JUDGMENT; and

DECLARATION OF EUGENE GENCHEV IN OPPOSITION TO MOTION TO DISMISS OR FOR SUMMARY JUDGMENT

by hand delivery addressed as follows and through the Court's electronic filing system:

Lisa Kralik Hansen, Esq.
Grace, Cosgrove & Schirm
444 S. Flower Street, Suite 1100
Los Angeles, California 90071

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on July 21, 2008 at San Diego, California.

Douglas Jaffe

DOUGLAS JAFFE, ESQ. Bar No. 170354
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San Diego, California 92101
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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

EUGENE GENCHEV, Plaintiff, vs. DETROIT DIESEL CORPORATION, Defendant.	Case No.: 08-01021-W-NLS DECLARATION OF EUGENE GENCHEV IN OPPOSITION TO MOTION TO DISMISS OR FOR SUMMARY JUDGMENT HEARING DATE: August 4, 2008 NO ORAL ARGUMENT PURSUANT TO LOCAL RULE 7.1

EUGENE GENCHEV declares as follows:

1. I am the plaintiff in this action. As such I have personal knowledge of the facts set forth in this Declaration and, if called as a witness, could and would testify competently to such facts under oath.

2. I purchased a 2004 Freightliner CL120 vehicle and a 2005 Freightliner FLD from an authorized Detroit Diesel distributor (the “Vehicles”). The Vehicles are commonly known as the tractor portions of a tractor/trailer (an "18-wheeler") for trucking large loads over long distances. Detroit Diesel expressly warranted the engines of the Vehicles.

3. I previously commenced an action against Freightliner, LLC, that was removed to this Court, based upon Freightliner's fraud in selling me the Vehicles without disclosing the Vehicle's nonconformities that Freightliner had documented in its records prior to the sale of the Vehicles to me. I also asserted claims based upon Freightliner's warranty, which expressly excluded the Vehicle's engines which were warranted by Detroit Diesel.

4. I obtained a jury verdict in my favor. Just before the jury was to determine the amount of punitive damages against Freightliner, it settled the action by paying me over $60,000. The Court dismissed, "all causes of action filed by plaintiff against defendant". That was the exact language of the stipulation of dismissal filed and was intentionally limited to claims against only Freightliner. There was no other settlement document.

5. The Vehicles have experienced engine nonconformities which are covered by the Detroit Diesel warranties. Detroit Diesel has failed and refused to pay for the repairs. These claims were not addressed in the Freightliner Action as they did not involve Freightliner's fraud and the Freightliner warranties which expressly disclaimed the engines which are the subject of this action.

6. The Freightliner warranty expressly states under the section of the warranty entitled "Exclusions", "The engine, including all its components as supplied by the manufacturer, are not covered under this Warranty, but is warranted separately by the manufacturer of the engine. For engine warranty or service, contract the engine manufacturer's authorized sales and service facility". See, Exhibit A.

7. Detroit Diesel separately warranted the engines of the Vehicles. See, Exhibit B. The engine warranties for both Vehicles contain the same terms. The issues regarding the Vehicle engines were not litigated in the Freightliner Action.

8. On December 20, 2006, Detroit Diesel admitted the engine nonconformities. Attached as Exhibit C is a letter from Valley Power Systems, Inc. to me which I received. Valley Power Systems, Inc. is an authorized Detroit Diesel warranty repair facility.

9. Through the December 20, 2006 letter, Detroit Diesel most significantly admitted the coolant leak at the EGR cooler. See, Exhibit C, #12. That coolant leak has caused unacceptable contamination of the engine oil. I sent a sample for analysis and obtained the results which are set forth in Exhibit D. As set forth on page 2 of Exhibit D under the section entitled, "Coolant Content", "Abnormal condition can cause severe degradation of the lubricant, leading to local oil starvation, lubricant failure and eventual excessive mechanical wear". Both of the Vehicles are experiencing similar engine nonconformities.

10. I request the Court allow discovery pursuant to Rule 56(f) of the Federal Rules Of Civil Procedure. This action was only recently removed to this Court and no discovery is allowable yet pursuant to Rule 26 of the Federal Rules Of Civil Procedure. Discovery will provide such essential facts as :

1) Detroit Diesel's admissions regarding the warranties it provided for the Vehicles;

2) Repair records which will include the notes of the repair technicians which are admissions against interest for Detroit Diesel; and

3) Detroit Diesel's warranty history regarding the Vehicle which will demonstrate that Detroit Diesel has covered some nonconformities under its warranties with me, which assists in demonstrating the existence of the warranties.

Executed on this 21st day of July, 2008 at San Diego, California.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

_s/ Eugene Genchev___________________

FREIGHTLINER®

FREIGHTLINER TRUCKS

OWNER'S WARRANTY INFORMATION FOR NORTH AMERICA

IMPORTANT: This warranty applies only to vehicles sold and domiciled in the USA and Canada.

PENGAD 800-631-6989
EXHIBIT
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Limitation of Liability

COMPANY'S LIABILITY UNDER THIS WARRANTY IS LIMITED TO THE COST TO REPAIR OR REPLACE, IN COMPANY'S SOLE DISCRETION, THE DEFECTIVE COMPONENT OR PART, WHICH IN NO EVENT, SHALL EXCEED THE FAIR MARKET VALUE OF THE VEHICLE AT THE TIME THE DEFECT IS DISCOVERED.

In no event shall Company be liable for special, indirect, incidental, or consequential damages including, but not limited to, injuries to persons or damage to property, loss of profits or anticipated profits, or loss of vehicle use.

Exclusions

The following components, parts, or conditions, are specifically excluded from coverage under this Warranty.

Air Compressors, Engine Brakes, and Other Proprietary Engine Components

The engine manufacturer installs most air compressors and engine brakes. Any failure of a proprietary engine component or Jacob® Brake component must be filed directly to the engine manufacturer. Failures on non-proprietary components can be filed through Freightliner LLC Dealers.

Air Springs

Tolerance buildup can occur during the assembly process of the rear suspension and rear cab air springs, and can cause the springs to have the appearance of being crooked, misaligned or mis-installed. This tolerance buildup is not detrimental to the operation of the vehicle and will not have an affect on either the quality of the ride or the durability of the components or vehicle. Straightening of these springs is not covered under this Warranty.

Allison Transmissions

Allison transmissions are not covered under this Warranty, but are warranted separately by Allison. Information regarding Allison's warranty is provided for informational purposes only and is subject to change. For warranty or service information, contact Allison's authorized sales and service facility.

Alignment of Axles/Wheels/Steering Wheel

Where available, the Beissbarth Alignment System is used to align axles, wheels, and to center the steering

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wheel to Freightliner LLC specifications at the factory. Accordingly, warranty claims will not be accepted for re-alignment or re-adjustment on vehicles built at St. Thomas, Ontario; Cleveland, NC; Mt. Holly, NC or Portland, OR, or other locations where the Beissbarth system is installed.

Claims for trucks not built at plants utilizing the Beissbarth system may be submitted if the axle alignment or steering wheel alignment is found to be out of Freightliner LLC specifications and is corrected prior to in-service of the truck.

Before and after alignment-machine readings (print out) as generated by the alignment equipment must be provided with each warranty claim to verify the alignment is out of Freightliner specifications. Readings should be faxed to Company Warranty Department.

Any special alignment settings at the request of the customer must be handled between the Dealer and customer after delivery from the factory. These special adjustments/alignments are not covered under this Warranty.

Axle Breather Vents

During the vehicle manufacturing process, an oil run or drip stain may appear at the breather vent. Removing the vent, applying pipe sealant to the threaded vent fitting and re-installing the vent is unnecessary. Removing the axle breather vent and re-sealing the threaded fitting is not covered under this Warranty.

Cab Interior Components

The repair or replacement of cab interior components that are rendered unserviceable due to normal wear or abuse are not covered under this Warranty. These components include, but are not limited to:

- Upholstery
- Floor coverings (including floor mats)
- Curtains
- Window shades
- Steering wheel
- Steering wheel wrap

Chrome Surfaces, Aluminum and Stainless Steel Components

The following items ARE covered under this Warranty:

- Chrome peeling off in sheets.
- Chrome cut at mounting bolts due to over-torque at the factory.
- Bubbles in the chrome that are not caused by rock chips and/or general rust conditions.
- Isolated rust along seams or welds.

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The following items are NOT covered under this Warranty:

- General rust, for example, rust on the unfinished backside of a bumper.
- Dimpling at the mounting bolts.
- Staining, bluing, and/or yellowing that can be cleaned with a quality cleaning-product.
- Rust, pits, and/or nicks caused by road wash or road debris breaking the chrome surface.
- Streaks/stains/corrosion caused by severe wash solutions or corrosive road salts/chemicals.

Claims pertaining to failures of chrome surfaces, aluminum, and stainless steel components will not be processed unless a clear digital picture is provided that adequately shows the defect.

Clutch Adjustment

Clutch adjustments are normally required due to clutch wear and are considered normal maintenance. However, if the clutch adjustment is found to be outside of Company specifications during, or prior to, in-service of the vehicle, a warranty claim will be accepted on a one-time basis.

Claims for clutch adjustments will not be accepted unless the adjustment is found to be outside of Company specifications using the special clutch adjustment measuring tools provided by Company (e.g., adjusting the clutch to satisfy feel will not be accepted as warranty).

Competition

Warranty will become void on any vehicle that is used in competition, including but not limited to:

- Racing
- Tractor pulls
- Other motorsports

Consumable Parts

Parts that are subject to consumption during their normal service life and are routinely replaced during normal maintenance services are not covered under this Warranty. These items include, but are not limited to the following:

- Antennas
- Antifreeze
- Ashtrays
- Belts
- Brake linings
- Cigarette lighter element
- Clutch brake
- Clutch linings
- Data logger batteries
- Desiccant cartridges
- Filters (fuel, air, oil, water)

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- Fire extinguishers
- Fluids (unless low due to a warrantable failure)
- Fluorescent ballast and tubes
- Fuses
- Gladhand
- Hostennas
- Light bulbs
- Lubricants
- Mattresses
- Mud flaps
- Mud flap mounting brackets
- Radiator cap
- Receiver-drier filter
- Sealed light assemblies
- Trailer air hoses
- Trailer electrical cables
- Windshield washer nozzles
- Wiper arms and blades

Damage

The following are not covered under this Warranty:

- Damage caused by use of the vehicle in any application that is not approved or is inconsistent with build specifications.
- Damage resulting from improper use or misuse or abuse, negligence, improper operation, improper or insufficient maintenance (including, but not limited to failure to maintain vehicle as outlined in the Driver's/Operator's and Maintenance manuals), overloading, unauthorized modifications, accidents, or operation at excessive speeds.
- Environmental damage, including airborne fallout (including chemicals, tree sap, etc.), or other atmospheric conditions, hailstones, or other acts of nature.
- Damage caused by road salts/chemicals or cleaning solvents, detergents or compounds.
- Storage deterioration including damage caused by improper or insufficient storage or maintenance.
- Damage caused by road hazards or road conditions.
- Damage caused during transport.
- Damages caused by high-pressure washing.
- Damages caused by customer-installed sealer in air conditioning systems.
- Damages caused by engine horsepower/torque upgrades.
- Damage due to vibration associated with misapplication or misoperation of drivetrain components.

Engine

The engine, including all of its components as supplied by the manufacturer, are not covered under this Warranty, but is warranted separately by the manufac-

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turer of the engine. For engine warranty or service, contact the engine manufacturer's authorized sales and service facility.

Exhaust System Clamps

During the early life of the vehicle or when the engine is cold, many exhaust clamps exhibit a soot trace. This condition is self-correcting and does not require adjustment, tightening, or replacement of the clamp. Claims for adjusting or tightening will not be paid under warranty.

Fifth Wheels

Adjustment of the locking mechanism, slide locking plungers, and the repair or replacement of lock guards are considered routine maintenance and are not covered under this Warranty.

Fire Pumps

Fire pump warranty applies only to pumps that have been specified on the original truck sales order (TSO).

Glass, Mirrors, Lens

Glass, mirror or lens breakage or chips or scratches of glass, mirrors, or lenses are not covered by this Warranty.

- Towing/road call assistance (unless coverage is specifically stated in the applicable warranty ta-

Misapplication of Vehicle

The warranty on any vehicle used inconsistent with its specified vocation/application will be downgraded to the warranty that is consistent with the vehicle use. Any and all claims associated with the misapplication of the vehicle will be subject to chargeback.

Miscellaneous Expenses

Premium charges and work not directly related to the repair or replacement of a warranted part are not covered under this Warranty. Examples include, but are not limited to:

- Federal, state, provincial, and local taxes.
- Travel expenses.
- Loss of revenue.
- Customer labor including overtime labor.
- Downtime.
- Driver's expenses.
- Cost of rental equipment.
- Loss of cargo, including perishable cargo.
- General housekeeping supplies (i.e. rags, solvents, sweeping compounds, coveralls, etc.).
- Communication charges.

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ALBUQUERQUE FREIGHTLINER
Albuquerque, New Mexico 87121
Phone 505.833.1000 Fax 505.833.1064

STERLING

August 2, 2004

Eugene Genchev

New Freightliner CL120 Vin# 1FUJA6CK34DM92600
WILL HAVE 5 YEAR 500,000 MILE ENGINE WARRANTY AT NO CHARGE.

Thanks

Byron Schrunk

Thomas

WESTERN STAR TRUCKS

A Member of the Lonestar Freightliner Group

Coverage 17SE199 / 0202

Serial Num 06R0752287 **Model** 6067HK6E **Delv Date** 02 AUG 2004

TYPE: STANDARD WARRANTY

MONTHS: 24

MILES/HRS: Unlimited

ENG R&R?

PARTS?

LABOR?

ALL ENGINE COMPONENTS SUPPLIED BY DETROIT DIESEL ARE COVERED TO THE TIME AND MILEAGE LIMITS OF THE BASE WARRANTY DESCRIBED ON THE LEFT. ANY COMPONENTS, INCLUDING MAJOR COMPONENTS, WITH EXCEPTIONS TO THESE LIMITS ARE SHOWN BELOW. NOTE: MAJOR COMPONENTS ARE COVERED TO THE LIMITS OF THE BASE WARRANTY,THEN TO 500,000 MILES IN MONTHS 25-60, PARTS AND NO LABOR. THE TF550 COMPRESSOR IS A SPECIAL MAJOR COMPONENT, AND IS COVERED FOR 100% PARTS AND 100% LABOR. FOR ADDITIONAL INFORMATION REFER TO THE WARRANTY PARCHMENT.

MAJOR COMPONENT AND OTHER EXCEPTIONS:

COMPONENT	Miles/Hrs	Parts	Months of Parts Cvrg	Labor	Months of Labor Cvrg
AIR COMPR	Unlimited	Y	24	Y	24
AIR COMPR/TF550	500,000	Y	60	Y	60
AIR INL HSG	500,000	Y	60	Y	24
ALT/GEN	Unlimited	Y	24	Y	24
CAMSHAFT	500,000	Y	60	Y	24
CONN ROD	500,000	Y	60	Y	24
CRANKSHAFT	500,000	Y	60	Y	24
CYLINDER BLOCK	500,000	Y	60	Y	24
CYLINDER HEAD	500,000	Y	60	Y	24
DDC ENGINE BRAKE	Unlimited	Y	24	Y	24
FILTER, FUEL	15,000	Y	6	Y	6
FILTER, LUBE OIL	15,000	Y	24	Y	24
FLYWHEEL HOUSING	500,000	Y	60	Y	24
INJECTOR	100,000	Y	24	Y	24
MAIN BEARING BOLTS	500,000	Y	60	Y	24
NOGROUP	0	N	0	N	0
OIL COOLER HOUSING	500,000	Y	60	Y	24
STARTER	100,000	Y	24	Y	24
THERMOSTAT	240,000	Y	24	Y	24
THERMOSTATSEAL	240,000	Y	24	Y	24
WATERPUMP HSG	500,000	Y	60	Y	24

Valley
POWER SYSTEMS, INC.

5725 Eastgate Drive San Diego, CA 92121 Phone (858) 587-8524
Fax (858) 587-4664

Date: 12/20/06

To: Eugene, EDG Trucking

The following is a breakdown of the problems found with Unit # 23 – Serial # 06R0770106

1. Hard start if unit has been shut down for a period longer than 3 hours.
2. Park Brake Knob missing.
3. Slow air build, air dryer service needed.
4. Right side mirror turn signal inop.
5. 5th wheel needs lube
6. Rear middle clearance light inop.
7. Turbo exhaust pipe needs replaced (sensor bung cracked and sensor threads stripped).
8. Charged Air Cooler leaks at right side lower corner.
9. Oil leak at the Camshaft pocket.
10. 2 out three mounting bolts for the fuel pump are missing.
11. 05M2 – Update has not been completed, although a claim has been submitted.
12. Coolant leak at the EGR cooler (loose clamp may be the cause).
13. New exhaust clamp needed at the flex pipe of exhaust.
14. Tripple air horn inop.
15. Excessive play at the clutch linkage.
16. Fuel filter plugged.
17. Chassis lube and brake adjustment needed.

PENGAD 800-631-6989
EXHIBIT
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"Blood Test For Your Truck"

BOSS TRUCK SHOP
7482 BOSSELMAN AVE.
GRAND ISLAND, NE 68802
Phone: 308-381-7272 Fax: 308-381-7111

EDG,
11480 CYPRESS TERRACE PL
SAN DIEGO, CA 92131
Phone: Fax:
Email:

Truck Make:	**FREIGHTLINER**	Fleet Unit ID:	**NA**	VIN#:	**4DM92600**
Truck Year:	**2004**	Engine Make:	**DETROIT DIESEL**	Sample Date:	**01/05/2007**
Sump Capacity:	**44.0**	Engine Model:	**60S**	Equipment:	**DIESEL ENGINE**
Oil Brand:	**MOBIL**	Sample ID:	**809**	Vehicle:	**382035 Miles**
Oil Type:	**Delvac 1300 Super**	User Sample:	**AJM**	Oil:	**22000 Miles**
Oil Weight:	**15W40**	Operator:	**UNKNOWN**		

	Normal:	Monitor:	Inspect:	Reason
Air Filter	X			
Bearings	X			
Bushings	X			
Camshaft	X			
Crankshaft	X			
Cylinders	X			
Engine Block	X			
Oil Condition			X	*Oil no longer serviceable due to high contamination.*
Piston Rings	X			
Pistons	X			
Sludge Potential			X	*Sludge formation possible due to high oxidation and/or nitration.*
Water Contamination			X	*Elevated water content detected.*
Wear Metals	X			

Overall Results: ***Unacceptable***

RESAMPLE AT 1/2 SERVICE INTERVAL TO MONITOR.

Recommendation:

1. *All engine wear rates normal.*
2. *Change engine oil and filter.*
3. *Check for source of water contamination.*
4. *For a more thorough removal of contaminants, an engine oil flush service is recommended.*

PENGAD 800-631-6989
EXHIBIT
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UNDERSTANDING YOUR ENGINE REPORT

It's easy!

You don't need to be an expert . . The built-in diagnostics do it for you!

The analytical test results and diagnostic comments / recommendations have been provided by the On-site Analyzer (OSA), which incorporates the latest technological advancements in the oil analysis industry.

The tests include optical emission spectroscopy and infrared spectroscopy to monitor engine or transmission internal wear rates as well as the physical properties of the oil to determine the oil's condition and serviceability.

We test for 10 elements: 6 wear metals, 1 additive metal, and 3 contaminant metals. The wear metals are minute particles of metal suspended in the oil, which are formed by friction between moving parts, abrasion or corrosion. The On-Site Analyzer produces a measurement in parts per million (ppm). These results are scientifically matched against known engine or transmission wear patterns and reported in the diagnostic comment section depending on the severity of the situation and on the following wear information for engines, transmissions and gear boxes (maximum 90 weight oil or 80W90 multi-grade oils). The condemning limits (or break points) are dependent on the engine or transmission make, the total number of miles on the system (or since overhaul).

Diagnostics:

Air Filter: Abnormal condition usually caused by the ingestion of dirt, resulting from a failed or torn air filter.

Bearings, Bushings, Camshaft and Crankshaft: Abnormal condition can be caused by local oil starvation resulting from a blocked oil-way, or ingested dirt or other abrasive material, or the presence of corrosive materials from a heavily degraded engine oil (too many hours on the oil)

Cooling System: Abnormal condition can be caused by leaks from gaskets or seals, a broken head gasket or from a cracked engine block.

Cylinders, Piston Rings, Pistons: Abnormal condition can be caused by poor lubrication resulting from blocked oil-ways or excessive deposits in the ring zone or the ingested dirt or other abrasive materials.

Engine Block: Abnormal condition can be caused by a cracking or distortion of the engine block resulting from extreme low or high temperatures.

Fuel System: Abnormal condition can be caused by leaks in internal fuel lines, a failed fuel pump diaphragm, or leaking fuel injectors (seats).

Summary Diagnostics:

Wear Metals: Abnormal condition can be caused by ingestion of dirt or other abrasive materials (failed air filter), local oil starvation (block oil-way), or corrosion caused by.

Coolant Content: Abnormal condition can cause severe degradation of the lubricant, leading to local oil starvation, lubricant failure and eventual excessive mechanical wear.

Sludge Potential: Abnormal condition can be caused by over-extension of the oil life or from regular short journeys where engine does not reach normal operating temperature.

Fuel Content: Abnormal condition can be caused by leaks in internal fuel lines, a failed fuel pump diaphragm, or leaking fuel injectors (seats).

Water Content: Abnormal condition can be caused by excessive condensation, and at high levels from a cracked engine block, a broken head gasket, a leaking water pump seal, or simply ingestion of water from operating vehicle in flood conditions.

Wear Metal Associations:

Aluminum: Pistons, engine blocks, blowers, and bearings.

Chromium: Compression rings, cams, low friction bearings, liners, zinc chromate cooling system inhibitor.

Copper: Bearings, bushings, thrust washers, oil cooler, and clutches, oil additive.

Iron: Crankshaft, valve train, cylinders, gears, liner, and bearings.

Lead: Bearings, contaminant from leaded gasoline (automotive only).

Tin: Pistons, bearings, and bushings.

Additive Metals:

Molybdenum: EP additives, alloying metal with iron, rings, friction reducing coating.

Contaminant Metals:

Contaminant metals result primarily through problems with the air intake system (Silica - dirt) or because of coolant leaks (Potassium, Sodium and sometimes Silicone are typical additives in water treatment chemicals). These metals are also measured in ppm and evaluated on content and severity.

Silicon: Usually an indication of dirt ingression when (the ratio of silicon to aluminum is 3.4:1) as the root resulting in abrasive wear, seal material, or a silicon based oil or coolant additive, piston torching with an increase in iron and chromium (the ratio of silicon to aluminum is 1:1).

Potassium: A common coolant additive that is an indication of a cooling system problem, fly ash, road salt, and trace element in fuel.

Sodium: oil additive constituent, coolant additive, road salt, salt water, fly ash, dirt, and grease.

Physical Properties:

This section contains the physical data of your oil analysis and is explained as follows:

Water: Measured in % weight, can be an indication of condensation due to a cold running system, a cooling system leak, or outside contamination (severe at greater than 1%).

Glycol: Measured in % weight, is in the formulation of most commercial coolant. Its presence usually indicates some type of coolant leak (Abnormal at greater than 0.6%).

Fuel Dilution: Measured in % weight, can indicate faulty combustion, rich air/fuel mixture when present at between 2% and less than 5%. An injector problem or internal fuel line leak is typically indicated when fuel is detected in high level. This test result is accurate within ±4% for diesel engines and within ±1.5% for gasoline engines.

Oxidation: Measured in absorbance units, is the result of oxygen in the air interacting with the oil at elevated temperatures, and is a normal process as the oil ages. When an engine is operated continuously at high temperatures for extended periods, or when a drain interval is over–extended then values greater than 25 may be observed and an oil change is normally recommended. This test is accurate within ±4 absorption units.

Nitration: (Applicable for gasoline engines only) measured in absorbance units. Nitration products are formed during the fuel combustion process. The products are often corrosive and can accelerate oil deterioration.

Viscosity (Estimated value): This calculated measurement is an indication of the oil's ability to flow and lubricate the moving parts of the engine or transmission. It's an indication whether the oil is too thick or too thin. As an approximate guide, the viscosity of 15W40 weight diesel engine oil should be between 12.4 and 16.3. The viscosity of 10W30 weight automotive oil should be between 9.3 and 12.4. ***The reported viscosity is an estimated number only.*** This estimated calculated viscosity is accurate within ±1.5 cSL

Total Base Number (TBN, Estimated Value): A calculated measurement of the oil's alkaline reserve (additive) package of the oil that is capable of neutralizing acidic contaminants, primarily formed by the adsorption of combustion gases and the aging of the oil. Combustion by-products are the source of the strongest acids, therefore, over-extended oil drain intervals, insufficient additive package, or overheating are causes for a low TBN. Typically, when the TBN is below 3, it is an indication that the oil is no longer serviceable and should be scheduled for an oil change.

Additional Physical Properties (Diesel Engines Only):

Soot: Measured as %soot, is a normal combustion by-product of diesel fuel and appears as a contaminant in the oil. At high levels it can cause an increase in the oil's viscosity (thickening of the oil.) Higher than normal levels can indicate an improper air/fuel ratio, defective air intakes or injectors and can cause deposits, thickening and over-extension of the oil additives.

ACCURACY OF RECOMMENDATIONS IS DEPENDENT ON REPRESENTATIVE OIL SAMPLES AND COMPLETELY CORRECT DATA ON BOTH VEHICLE AND OIL. THIS ANALYSIS IS INTENDED AS AN AID IN PREVENTING MECHANICAL WEAR. NO GUARANTEE, EXPRESSED OR IMPLIED, IS MADE AGAINST FAILURE OF THESE COMPONENTS. ON-SITE ANALYSIS LIABILITY IN ANY CASE IS LIMITED TO THE COST OF THE REPORTED ANALYSIS.

For Technical Interpretations of Results Call 1-561-691-5225